IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(Crl.).No. 197 of 2007(S)

PETITIONER:

SUJITHA, AGED 23, W/O.SURESH,
CHIRAYARIKATHU, PUTHUVAL PUTHAN VEEDU,
KALPANA COLONY, KAMUKARA, MEENAMKULAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE ADDL.CHIEF SECRETARY,
HOME AND VIGILANCE DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT MAGISTRATE,
OFFICE OF THE DISTRICT COLLECTORATE,
TRIVANDRUM.

3. THE SUPERINTENDENT, CENTRAL PRISON,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI K.K. RAVEENDRANATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 17-9-2007, THE COURT ON 1-10-2007, DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: THE TRUE COPY OF THE ORDER OF DETENTION NO.S11-44793/07 DATED 15-6-07.

EXT.P2: TRUE COPY OF THE GROUNDS OF DETENTION.

EXT.P3: TRUE COPY OF THE CONFIRMATION ORDER NO.44136/SS.A4/07/HOME DATED 25-6-2007.

EXT.P4: THRE TRUE COPY OF THE NOTICE OF THE KERAL PULAYAR MAHA SABHA, KAZHAKUTTAM AREA UNION.

EXT.P5: TRUE COPY OF THE REPRESENTATION DATED 18-10-2006 PREFERRED BY THE PETITIONER BEFORE THE SUPERINTENDENT OF POLICE (RURAL), THIRUVANANTHAPURAM.

EXT.P6: TRUE COPY OF THE ORDER DATED 14-11-2006 IN W.P(C) 28180/06.

EXT.P7: TRUE COPY OF THE ORDER DATED 18-1-2007 IN W.P(C) 1063/07.

//TRUE COPY//

P.R.RAMAN & V.K.MOHANAN, JJ.

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W.P (Crl.)NO. 197 of 2007.

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Dated Ist October, 2007

JUDGMENT

Mohanan, J.

One Suresh, son of Appu is detained under section 3 of the Anti-social Activities (Prevention) Ordinance, 2006 (Kerala) and therefore his wife, who is the petitioner herein, approached this Court praying inter alia to call for the records leading to Exts. P1, P2 and P3 and to quash the same by issuing a writ of certiorari and to release her husband by issuing a writ of habeas corpus.

2. In support of the above prayers, the petitioner submits that the grounds stated in the order of detention are with respect to the cases committed at very earlier period and there is no proximity of the detention and the crime alleged to have been committed. According to the petitioner, while the Ist respondent issued Ext.P3 confirmation order, this aspect was not considered. It is further submitted that the allegations levelled against the detenu would not constitute legal grounds for detaining him as a 'rowdy' as defined

under subsection (t) of section 2 of the Ordinance. It is also averred that the petitioner's husband had reformed himself and had, in a convention under the auspicious of the Kerala Pulayar Maha Sabha, Kazhakkuttam area union held on 30-10-2005 as Kuttavimuktha Bodhavalkarana Convention, vowed to leave all criminal activities. According to the petitioner, after the said convention petitioner's husband had turned into a new life and was eking his livelihood by doing coolie works. The petitioner submitted that at that point of time, her husband's past was haunting him and he was suffering threat from notorious gang which constrained the petitioner to prefer a representation before the Superintendent of Police (Rural), Trivandrum for police protection for the life of the detenu as well as his family and since no protection was granted, according to the petitioner, the detenu has preferred WP(C) 28180/2006 before this Court for police protection which resulted in Ext.P6 order by which this Court has directed that the investigation can be continued and the police was directed to see that the detenu is not attacked by his enemies.

Thereafter alleging police harassment, WP(C)1063/2007 was preferred before this Court and the same was disposed of by this Court by order dated 18-1-2007 which is marked as Ext.P7. Thus according to the petitioner, the above aspects were not considered either by the 2nd respondent or by the Ist respondent while issuing Exts.P1 and P3 orders respectively by 2nd and Ist respondents.

3. Another contention raised by the petitioner is that the ordinance mentioned above is unconstitutional as it amounts to colourable exercise of the power of the Governor. In support of the above contention, several facts are stated and to substantiate the above contentions, the petitioner placed reliance on the decision reported in **D.C.Wadhva** v. **State of Bihar** (AIR 1987 SC 579) ; **P.Vajravelu Mudaliar** v. **Spl.Dy.Collector, Madras (AIR 1965 SCR 614 = AIR 1965 SC 1017)** and **K.G. Gajapathi Narayan Deo v. State of Orissa (1954) 1 SCR 1) = (AIR 1953 SC 375).** It is also stated that in view of the provisions contained in Article 22(5) of the Constitution of India, the detaining authority as well as the confirming authority ought to have

considered all the relevant aspects which are material for the subjective satisfaction of the authorities concerned. But according to the petitioner, such relevant and material records and datas were not placed and the same were not scrutinised before passing the impugned orders. It is argued that the more stringent the law, the more should have been the subjective satisfaction since every order passed under the law affects the personal liberty and life of the citizens guaranteed by Article 21 of the Constitution of India. According to the petitioner, the relevant material aspects were deliberately suppressed from the consideration of the detaining and confirming authorities and hence, the orders under challenge are liable to be set aside as the same are violative of the constitutional provisions. It is also submitted that on an examination of the history of the petitioner's husband it would reveal that the detenu is not a threat to the society at the time when the Ordinance came into existence and when the impugned orders are issued. Therefore, Exts.P1, P2 and P3 are against the mandate contained in Article 20(2) of the Constitution of India and

hence the same are liable to be quashed.

4. Countenancing each and every contentions raised by the petitioner, separate counter affidavits have been filed by the Ist and 2nd respondents. The 2nd respondent in his counter affidavit stated that he has got credible information from the Superintendent of Police (Rural) Trivandrum as per the letter Ext.D1-16192/2007(T) dated 11-6-2007 against the husband of the petitioner namely, Suresh, wherein it is stated that the detenu was involved in 8 criminal cases out of which 6 are registered in the Kazhakuttom police station. The details of those criminal cases as disclosed from the counter affidavits are as follows: Crime No.149/2000 for the offences punishable under sections 452, 427, 379 and 506(ii) of IPC; crime No.274/2007 for the offences punishable under sections 394 of I.P.C. and section 27 of the Arms Act; Crime No.312/2002 for the offences punishable under sections 143, 147, 148, 149, 447, 427 and 506(ii) of IPC; Crime No.322/2003 for the offences punishable under sections 143, 147, 148, 149, 324, 326 & 120(b) of I.P.C; Crime No.329/2003 for the offences punishable under

sections 143, 147, 148, 149, 342, 302 of IPC and section 27 of the Arms Act; Crime No.604/2006 for the offences punishable under sections 394 of IPC. All those crimes are registered in Kazhakuttom police station. Crime No.131/2004 is registered at the Kadinamkulam police station for the offences punishable under sections 324 and 34 of IPC; another crime No.378/2006 in the Peroorkada police station for the offences punishable under section 143, 147, 148, 149, 323, 324 and 363 and 308 of IPC. According to the counter affidavit, those crimes are spanning the period from 2000 to 2006. It is also stated that he is involved in various crimes including offences under the Arms Act and Explosive Substances Act and the same are relating to the offences covered by Chapter XVI, XVII, and XXII of IPC and section 27 of the Arms Act. The report so received by the 2nd respondent further disclosed that the detenu is currently involved in anti-social activities prejudicial to the maintenance of public peace and order and his involvement in antisocial activities are within the ambit of the provisions contained in the Kerala Antisocial Activities (Prevention)

Ordinance 2007. The report further shows that if the husband of the petitioner is allowed to move freely, there are all probabilities and likelihood in indulging anti-social activities prejudicial to the maintenance of public peace and order. According to the 2nd respondent, on examination and evaluation of the report, he has satisfied that the said Suresh is a known rowdy as defined in the above Ordinance and if he is not detained, as a preventive measure, he would likely to indulge in anti-social activities which would directly or indirectly cause alarm, danger or feeling of insecurity or cause threat to public or result in wide spread danger to public tranquility in Trivandrum district. Thus according to the 2nd respondent, on his satisfaction of the above grounds, he had issued Ext.P1 order. On the basis of Ext.P1 detention order and the grounds of detention dated 15-6-2007, the detenu was arrested on 17-6-2007 and detained him in the central prison , Trivandrum.

5. In the counter affidavit, it is specifically stated that copy of the detention order and the grounds on which the

detention order was issued, were served on the detenu and while doing so, the detenu was informed in writing of his right to make a representation before the Government and to the Advisory Board and according to the 2nd respondent, the same was acknowledged by the detenu on the copy of the grounds for detention itself. The 2nd respondent further states that all the above aspects were reported to the Ist respondent and to the Director General of Police together with the copy of the order and all supporting materials on 19-6-2007 and finally, the detention order was confirmed by the Ist respondent as per Ext.P3 order.

6. In paragraph 10 of the counter affidavit of the 2nd respondent, it is specifically stated that out of the 8 crimes, 2 crimes were registered against the detenu during the year 2006 in the Kazhakuttom police station as well as Peroorkada police station and those facts are sufficient to show the falsehood of the averment of the petitioner contained in para 4 of the writ petition regarding the "grounds of detention are with regard to cases committed at very earlier stages". Showing the factum of the registration

of two crimes during the year 2006, the 2nd respondent further states that the claim of the petitioner that her husband had reformed himself during the end of 2005, is absolutely incorrect. Thus according to the 2nd respondent, Ext.P1 detention order is absolutely perfect and legal.

7. In the counter affidavit filed by the Ist respondent, it is specifically stated that the order of detention passed by the 2nd respondent was confirmed as per Ext.P3 order on satisfaction after evaluation of the said materials and on an assessment that if the detenu is allowed to go freely, his anti-social activities will cause danger, alarm and a feeling of insecurity to the public and it was absolutely necessary to prevent the same for the better safeguard of the public peace and order. In the said counter affidavit the Ist respondent has also stated that there was no willful negligence or delay on the part of the Government in re-promulgating the Ordinance as 21/2007, 30/2007 and 44/2007. It has specifically stated in paragraph 7 of the counter affidavit that a Bill replacing the Ordinance has already been introduced in the ongoing Session of the

Assembly on 14-9-2007 and the same has been referred to the Subject Committee. Thus according to the Ist respondent, the contention of the petitioner that the re-promulgation of the Ordinance by the Governor amounts to colourable exercise of power, is without any basis. Reiterating the correctness and legality of the Ordinance, the Ist respondent states that there is no violation of Article 22 of the Constitution of India rather the Ordinance was issued in strict compliance of the said provisions of the constitution of India. Thus the Ist respondent states that Ext.P1 detention order as well as Ext.P3 confirmation order are absolutely correct and in accordance with the provisions contained in the said Ordinance and there is no violation of any of the provisions of the Constitution of India.

8. We have heard Mr.Sasthamangalam S.Ajithkumar, learned counsel appearing for the petitioner as well as Mr. K.K.Ravindranath, the Laision Officer appearing for the respondents.

9. Going by the pleadings of the petitioner, it can be seen that her challenge against Ext.P1 and P3 orders are

firstly on the basis its constitutional validity. Secondly she attacked Ext.P1 and P3 saying that there is no proximity or nexuss with the alleged crime and Ext.P1 detention order as well as Ext.P3 confirmation order. Another contention is that Ext.P1 and P3 orders are vitiated for the sole reason that the same are issued without application of mind and without consideration of relevant materials which are very vital for arriving subjective satisfaction of the authorities concerned. But during the course of argument Mr.Sasthamangalam S.Ajithkumar, learned counsel appearing for the petitioner has submitted that he is not pressing the first point and confining his argument to other points.

10. On going by Ext.P1 detention order, and also the counter affidavit filed by the 2nd respondent it can be seen that the detenu involved in 8 criminal cases spanning over 2000 to 2006. On a perusal of Ext.P1 order, one can ascertain the nature and gravity of the offences in which the detenu involved. Pointing out the fact that almost all the crimes registered against the petitioner's husband are

pertaining to much earlier to the date of Ext.P1 order, the petitioner content that there is no proximity of the detention with the crime alleged. On a reading of section 3 of the Ordinance, it can be seen that the Government or an authorised officer if satisfied on the information received with regard to the activities of any known Goonda or known Rowdy, with a view to prevent such person from indulging in any anti-social activity within the State of Kerala in any manner, such person can be ordered to be detained as a preventive measure. So what are to be satisfied by the authority making detention order is regarding the activities of any known goonda or rowdy and further, unless such activities are prevented, such person is likely to indulge in any anti-social activities. Going by the definition of the term "known Rowdy", his acts done for the previous years calculated from the date of the order, are relevant and determinate in forming an opinion as to whether he should be kept under preventive detention. So the mere fact in the recent past he is not found involved in a crime by itself is no ground to vitiate the order of detention, especially in the

light of the specific provisions contained in the Act defining the class of persons liable to be detained. In this case, the detenu had involved in several cases, which are very serious in nature. The criminal history of the detenu shows that he had involved in cases like house trespass, theft, robbery, conspiracy, kidnapping, attempt to commit culpable homicide, murder cases etc. A person having such criminal antecedents may at any time indulge in further criminal activities and nobody can visualise or anticipate the point of time at which his criminal mind would arise and involve in criminal activities. So the available materials ensure the correctness and rationality of the satisfaction of the authorities concerned to come into a conclusion that such person will further involve in the commission of the offence unless he is prevented and such involvement would affect adversely the public tranquility, peace and security. Therefore, the contention of the petitioner that there is no proximity for the preventive detention order with the crimes which taken place earlier to the date of the order fails. So also it cannot be said that by Ext.P1 order, the detenu is

being punished and not preventing him from indulging in further criminal activities.

11. Another contention advanced by the petitioner is that while issuing Exts.P1 and P3 orders, the authorities concerned did not consider relevant materials. The learned counsel appearing for the petitioner emphatically argued that the petitioner's husband, the detenu had undergone reformation and he had turned into a new life and he was eking his livelihood by doing coolie works. In order to substantiate the above contention, the counsel placed much reliance on Exts.P4, P5, P6 and P7 records. Ext.P4 is a notice of the Kerala Pulayar Maha Sabha, Kazhakuttom area union, regarding the convention held on 30-10-2005 viz., "Kuttavimuktha Bodhavalkarana" Convention. Ext.P5 is a petition preferred before the Superintendent of Police (Rural) Trivandrum, Ext.P6 is the judgment of this Court in W.P.C.28180/2006 and Ext.P7 is another judgment of this Court in WPC 1063/2007. Based upon these documents, learned counsel submitted that the detenu had undergone mental reformation and he had changed his life style and

pulling out his family on the basis of the income derived from coolie work and therefore, Exts.P1 and P3 orders are issued without considering the relevant materials and therefore, the same are not legally sustainable.

12. Mr.K.K. Ravindranath, the Laision officer appearing for the respondents has pointed out that even after the date on which the said convention was held, the detenu had involved in several cases and by inviting our attention to crime Nos.378/2006 of Peroorkada police station for the offences under sections 143, 147, 148, 149, 323, 324, 363 and 308 of IPC and of crime No.604/2006 of Kazhakuttom police station for the offence under section 394 of IPC, it is submitted that the above contention of the petitioner is absolutely false and the factual position proved otherwise. That being the position, it cannot be said that Exts. P1 and P3 orders are issued without considering the relevant materials and therefore, the above contention of the petitioner is not helpful as the above crimes are pertained to the year 2006. We have perused Ext.P6 and P7 judgments of this Court which are not helpful for the petitioner to improve her case

and it appears that those records are not relevant while issuing Exts.P1 and P3 orders and therefore, even if the same are not considered, it will not prejudice the petitioner in any way.

13. In the light of the above facts and circumstances of the case, we find no reason to interfere with Exts.P1 and P3 orders and the petitioner is not entitled to get any relief as there is no merit in this writ petition and the same is liable to be dismissed. Accordingly, the WP(Crl.) is dismissed.

P.R.RAMAN, JUDGE.

V.K.MOHANAN, JUDGE.

kvm/-

P.R.RAMAN &
V.K.MOHANAN, JJ.

WP(CRL) No197/2007

Judgment

Dated: 1-10-2007.